

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA Nos.343, 417, 418, 437 and 788 of 2010

COMMON JUDGMENT:

All the appeals arise out of the same accident, as such they are being disposed of by this common judgment.

2. The respective appellants are the claimants in O.P.Nos.885, 880, 884, 881 and 883 of 2008 filed against the owner and insurer of Mahindra Max bearing No.AP25U 5738, under Section 166 of the Motor Vehicles Act (for short 'the Act'), for compensation of Rs.1,00,000/- each, saying that on 05.06.2007, while they were travelling in the Mahindra Max, in the limits of Toopran Village, Medak District at NH.7, due to the rash and negligent driving of the driver, it dashed another vehicle from behind, for which the respective claimants sustained injuries. Ex.A3 is the wound certificate in the respective O.Ps of the claimants. PW.2 is the Doctor, who issued the said wound certificates.

3. There is nothing to show that the overloading beyond five persons from the seating capacity of 5+1 contributed to the accident and also the claimants are more than five referred above. Once the seating capacity of 5+1 and the policy covers the risk, the insurer is jointly and severally

liable to pay compensation but for to decide on the quantum of compensation is utterly low to enhance or not.

4. MACMA No.343 of 2010: As per the observation of the Tribunal, particularly, at para-12, with reference to the evidence of the claimant examined as PW.1 for no x-ray found, there are only two simple injuries viz., contusion on the left subscapular area and abrasion on anterior lateral side of the left forearm and the Tribunal having held that the accident was the result of rash and negligent driving of the driver of the said Mahindra Max, awarded Rs.10,000/- with interest at 7.5%p.a. There is no evidence to show that the claimant sustained more than two simple injuries or any fracture, even to consider the appeal impugning the award for enhancement of compensation. Hence, the appeal is dismissed upholding the award of the Tribunal.

5. MACMA No.417 of 2010: As per Ex.A3-wound certificate and evidence of PW.1 including from x-ray exhibited, petitioner sustained one grievous injury which is fracture to left acromio clavicular joint and there are no other injuries reflecting from the evidence of PW.1 X-ray and Ex.A3-wound certificate and after considering the same, the Tribunal awarded Rs.25,000/-, which is required to enhance to Rs.35,000/-.

6. MACMA No.418 of 2010: The petitioner sustained one grievous injury of fracture of mandible, there from what the Tribunal awarded Rs.25,000/- is required to enhance to Rs.35,000/-.

7. MACMA No.437 of 2010: As per Ex.A3-wound certificate and the evidence of PW.1, the petitioner sustained simple injuries. Hence, Rs.10,000/- awarded by the Tribunal is upheld.

8. MACMA No.788 of 2010: As per Ex.A3-wound certificate and the evidence of PW.1, the petitioner sustained simple injuries. Hence, Rs.10,000/- awarded by the Tribunal is upheld.

9. Accordingly, MACMA Nos.343, 437 and 788 of 2010 are dismissed. MACMA Nos.417 and 418 of 2010 are partly allowed by enhancing the compensation of respective claims from Rs.25,000/- to Rs.35,000/- and in other respects, the awards of the Tribunal holds good. No order as to costs.

10. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:15.11.2016
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